on forever; and though I am fully sensible that I could have much improved what is now offered to the public by keeping it back for a longer time, I should but then have had to lament the impossibility of exhausting my subject." To those who reflect upon the difficulties of such a task, it is not necessary to make apology for the imperfections that may be discovered, or to point out the palliating circumstances.

Perhaps a closing word should be said for those pages given to the criticism of the existing law and to the history of its past. Something of each of these has a proper place. Sir James Stephen once laid down this canon: "A complete account of any branch of the law ought to consist of three parts, corresponding to its past, present, and future condition respectively; these parts are: Its history; A statement of it as an existing system; A critical discussion of its component parts, with a view to its improvement." That our law of Evidence can be improved upon, no one doubts. That the improvement must be gradual, yet unremitting, is equally certain, — at least if we believe, with Carlyle, that "all Law is but a tamed Furrow-field, slowly worked out and rendered arable from the waste Jungle." That the profession is interested, and that all practicable proposals for progress will have to come from or through the profession itself, must be conceded. Lord Ellenborough once disposed (to his own satisfaction) of a mild measure of reform by the argument that, if the rule of law were changed, "a lawyer who was well stored with these rules would be no better than any other man that is without them." No doubt the profession is to-day beyond the power of such a motive. It has shown again and again that its sympathies are rather with the noble sentiment of Erskine: "No precedents can sanction injustice; if they could, every human right would long ago have been extinct upon the earth." To those sympathies is addressed whatever of criticism has been ventured in the ensuing pages. *Valeat quantum valere potest.*

As for the history of this law, it need hardly be said that a great deal has remained hitherto undescribed, — if not unexplored. Its one master, now passed away, James Bradley Thayer, set the example and marked the lines for all subsequent research in this part of the subject. As rules directly appurtenant to jury trial, he made clear their development down to the 1600s, when the common-law system definitely obtained the upper hand of its rival, the canon-law system; and some of the rules he brought down to the present day. It was a part of the aim in this work to fill out the missing places, accepting the results already reached by him. Portions of this remaining history, as here set forth, had been seen and accepted by him; but a chief and irremediable disappointment has been that the portions later completed (which represented, indeed, a broader survey of the materials) lost the good fortune of his friendly perusal and possible concurrence.

J. H. W.

Northwestern University Law School,
Chicago, September 16, 1904.